

Message Text

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ACTION L-03

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FM AMEMBASSY MEXICO

TO SECSTATE WASHDC IMMEDIATE 8684

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FOR L. MR. LEIGH; OPR/LS - MR. SIERRA; JUSTICE MR. STEIN

E. O. 11652: N/A

TAGS: PFOR, MX

SUBJECT: REVISION OF DRAFT TREATY ON EXECUTION OF PENAL SENTENCES.

SUMMARY: AMBASSADOR ROSENZWEIG DIAZ HAS GIVEN EMBASSY EXPECTED
GOM REQUESTS FOR REVISIONS IN SUBJECT TREATY TO ARTICLES
II (3), V (2), V (3), AND (4). EMBASSY RECOMMENDATIONS
FOLLOW. END SUMMARY

1.- THREE PROPOSED REVISIONS IN DRAFT TREATY WERE GIVEN EMBASSY
LEGAL ADVISER GAITHER ON AN INFORMAL BASIS BY AMBASSADOR
ROSENZWEIG DIAZ NOVEMBER 16, 1976. THE AMBASSADOR INDICATED THAT THOUGH

INFORMAL, HE EXPECTED HE WOULD HAVE TO MAKE THEM FORMALLY AS SOON AS
HE RECEIVED THE FORMAL COMMENTS OF GOM AGENCIES (PRINCIPALLY
GOBERNACION).

2.- ARTICLE II (3)-THE GOM WOULD PROPOSE THAT THE LAST PHRASE BE
DELETED. THE PARAGRAPH WOULD READ, "THAT THE OFFENDER NOT BE A
DOMICILIATORY OF THE TRANSFERRING STATE."

3.-THE FOLLOWING REASONS WERE GIVEN FOR THE ABOVE CHANGE: (A) IF A
DOMICILIATORY IS ONE WHO HAS LIVED 5 YEARS IN THE TRANSFERRING STATE
IT MUST BE PRESUMED THAT THE INDIVIDUAL HAS WORKED AND LIVED IN THAT
STATE AND THEREFORE THE CONCEPT OF SOCIAL REHABILITATION IN ANOTHER
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STATE DOES NOT OBTAIN. (B) FROM THE GOM POINT OF VIEW, A PERSON WHO

HAS LIVED IN MEXICO FOR 5 YEARS WOULD NORMALLY BE CONSIDERED AN IMMIGRANT(INMIGRADO) AND THEREFORE THE POSSIBILITY THAT HE WOULD BE DEPORTED AFTER COMPLETING A SENTENCE WOULD BE REMOTE.

4.-ARTICLE V(2),-LINE 4, THE GOM WOULD PROPOSE THAT THE FOLLOWING BE INSERTED IN THE SPANISH TEXT FOR PURPOSES OF ALIGNMENT: AFTER THE PHRASE "RELATIVA A LA" INSERT "CONDENA CONDICIONAL Y A LA". NO CHANGE ENGLISH TEXT.

5.-ARTICLE V(3) AND (4)-THE GOM WOULD PROPOSE THE ADDITION OF TWO NEW SENTENCES TO V(3), TWO ALIGNMENT CHANCES IN SPANISH TEXT, AND THE AMALGAMATION OF THE TWO PARAGRAPHS INTO A NEW ARTICLE TO BECOME ARTICLE VIII. PRESENT ARTICLES VIII AND IX WOULD BECOME IX AND X RESPECTIVELY. THE NEW ARTICLE WOULD READ AS FOLLOWS:(ROUGH TRANSLATION):
BEGIN TEXT ARTICLE VIII

(1) THIS TREATY MAY ALSO BE APPLICABLE TO PERSONS SUBJECT TO SUPERVISION OR OTHER MEASURES UNDER THE LAWS OF ONE OF THE PARTIES RELATING TO YOUTHFUL OFFENDERS. THE PARTIES SHALL, IN ACCORDANCE WITH THEIR LAWS, AGREE TO THE TYPE OF TREATMENT TO BE ACCORDED SUCH INDIVIDUALS UPON TRANSFER. CONENT FOR THE TRANSFER SHALL BE OBTAINED BY THE LEGALLY AUTHORIZED INDIVIDUAL. THIS PROVISIONS SHALL NOT BE INTERPRETED TO LIMIT THE ABILITY WHICH THE PARTIES MAY HAVE, INDEPENDENT OF THE PRESENT TREATY, TO GRANT OR ACCEPT THE TRANSFER OF A YOUTHFUL OFFENDER.

(2)-(TAKE ENGLISH TEXT OF PARA. (4) OF ARTICLE V).
END TEXT

6.-SPANISH TEXT READS AS FOLLOWS:

ARTICULO VIII

1) EL PRESENTE TRATADO PODRA TAMBIEN APLICARSE A PERSONAS SUJETAS A SUPERVISION U OTRAS MEDIDAS CONFORME A LAS LEYES DE UNA DE LAS PARTES RELACIONADAS CON MENORES INFRACTORES. LAS PARTES, DE CONFORMIDAD CON SUS LEYES, ACORDARAN EL TIP DE TRATAMIENTO QUE SE APLICARA A TALES PERSONAS UNA VEZ TRASLADADAS. SE OBTENDRA EL CONSENTIMIENTO DE QUIEN ESTE LEGALMENT FACULTADO PARA OTORGRALO. NO SE INTERPRETARA ESTA DISPOSICION EN EL SENTIDO DE LIMITAR LA FACULTAD QUE LAS PARTES PUEDAN TENER, INDEPENDIENTEMENTE DEL PRESENTE TRATDO, PARA CONCEDER OR ACEPTAR EL TRASLADO DE UN MENOR INFRACTOR.

2) POR ACUERDO ESPECIAL ENTRE LAS PARTES, LAS PERSONAS ACUSADAS DE LIMITED OFFICIAL USE

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UN DELITO, RESPECTO DE LAS CUALES SE HAYA COMPROBADO QUE SUFREN UNA ENDFERMEDAD O ANOMALIA MENTAL PODRAN SER TRASLADADAS PARA SER ATENDIDAS EN INSTITUCIONES EN EL PAIS DE SU NACIONALIDAD.

7.-THE ALIGNMENT CHANGES ARE "UNA VEZ" FOR "AL SER",
LINE 5 OF PARA. (3) AND "COMPROBADO" FOR "DECLARADO",
LINE 2 OF PARA 4.

8.- THE PROVISION ON MINORS HAS BEEN OF PARTICULAR IMPORTANCE TO THE GOM THROUGH OUT THE NEGOTIATION. THE DIFFICULTIES SEEN IN THE PRESENT DRAFT,(ARTICLE V(3) ARE: (A) THE TREATY COULD PREJUDICE THE POSSIBILITY OF A TREATMENT OF A MINOR UNDER PRESENT MEXICAN PROCEDURE; I.E. THAT THE TREATY WOULD CAST WHAT WOULD AMOUNT TO A CLOUD OVER THEIR PRESENT PROCEDURES.
(B) UNDER MEXICAN LAW WHEN A MINOR COMMITS A CRIME, ANY LEGAL RIGHTS WHICH A PARENT OR GUARDIAN HAS OVER THAT MINOR ARE ASSUMED BY THE JUVENILE AUTHORITY, THUS CONSENT BY PARENT OR GUARDIAN WOULD NOT BE SUFFICIENT UNDER MEXICAN LAW.

9.-EMBASSY RECOMMENDATIONS FOLLOW.
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